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RECEIVED

August 16, 1991 **AUG 16 1991**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20554

REC'D MASS MFD BUF

AUG 19 1991

Re: Channel 54, Slidell, Louisiana
File Nos. BPCT-900518KO
BPCT-900726KG

VIDEO SERVICES

Dear Ms. Searcy:

Transmitted herewith, on behalf of Caroline K. Powley d/b/a Unicorn Slidell, applicant in the above-captioned proceeding, is an original and three copies of a Further Supplement to the Motion to Dismiss or Deny the application of Trudy M. Mitchell.

Should any questions arise concerning this matter, kindly communicate with the undersigned.

Sincerely,



Alan E. Aronowitz
Counsel for
CAROLINE K. POWLEY
d/b/a/ UNICORN SLIDELL

Enclosure: Further Supplement to the Motion to Dismiss
or Deny

cc: Caroline K. Powley

AEA:sj
c:\wp\26011.00\Searcy.815

**Before the
Federal Communications Commission
Washington, D.C. 20554**

RECEIVED

AUG 16 1991

In re Applications of

CAROLINE K. POWLEY
d/b/a UNICORN SLIDELL
Slidell, Louisiana

TRUDY M. MITCHELL
Slidell, Louisiana

For a Construction Permit for a
new UHF Commercial Television
Station to Operate on Channel 54,
Slidell, Louisiana

File No. BPCT-900518KO

File No. BPCT-900726KG

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To the Chief, Mass Media Bureau

**FURTHER SUPPLEMENT TO
MOTION TO DISMISS OR DENY**

Caroline K. Powley d/b/a Unicorn Slidell ("Unicorn"), applicant for a construction permit to build a new UHF Commercial Television Station to operate on Channel 54, Slidell, Louisiana, by its attorneys, hereby submits its Further Supplement to the Motion to Dismiss or Deny the above-captioned application of Trudy M. Mitchell. In support, the following is respectfully shown.

1. In the Motion to Dismiss or Deny, Unicorn demonstrated that the Mitchell application was hopelessly and patently defective when tendered and should not have been accepted for filing pursuant to Section 73.3566(a) of the Commission's Rules. Among other things, that pleading establishes that Mitchell's technical proposal is in violation of the separation

requirements of Section 73.610(d) and that the underlying application is replete with deficiencies and errors rendering it substantially incomplete and unacceptable.¹ Further, that pleading demonstrates that independent grounds exist for dismissal of Mitchell's application due to her failure to tender the proper filing fee with the application. By this pleading, Unicorn adds yet additional grounds for immediate dismissal of Mitchell's application due to her failure to properly tender the appropriate hearing fee.

2. In that regard, the Commission has determined that mutually exclusive commercial broadcast applicants that were accepted for filing before July 1, 1991, but were not designated for hearing prior to July 15, 1991, must pay the appropriate hearing fee by July 15, 1991. See Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd 157, 158, recon. gtd. in part, 6 FCC Rcd 3403 (1991). By Public Notice dated May 15, 1991 (attached hereto as "Exhibit 1"), the Commission announced the new hearing fee payment

¹ On June 24, 1991, Mitchell tendered an amendment to her pending application specifying, among other things, a new transmitter site. However, as pointed out in Unicorn's Supplement to the Motion to Dismiss or Deny opposing that amendment, nothing in that amendment rectifies the defective nature of the application when it was filed or in any way militates against its inadvertent acceptance for filing. Further, Unicorn asserted that the purported amendment was as replete with deficiencies and errors as the underlying application itself.

procedure, and stated that failure to make the hearing payment in a timely manner will result in the dismissal of the underlying pending application. See Exhibit 1, page 2. Both the Unicorn and Mitchell applications, accepted for filing on July 31, 1990, and February 5, 1991, respectively, and not yet designated for hearing, are subject to these fee filing rules.


3. By Public Notice dated July 19, 1991, the Commission issued a list of broadcast applicants submitting hearing fee payments under the new rules. For ease of reference, that Public Notice is attached hereto as "Exhibit 2." The only television applicant acknowledged to have timely and appropriately paid the required hearing fee is Caroline K. Powley on behalf of Unicorn's application. See Exhibit 2, page 4. There is no indication whatsoever from the July 19 Public Notice and a review of the Commission's records that Mitchell ever tendered the required hearing fee. Thus, in addition to the numerous other grounds for dismissal of Mitchell's application raised in Unicorn's previous pleadings, the failure to timely and appropriately tender the required hearing fee consistent with the Commission's clearly articulated procedure requires dismissal of the underlying pending application, consistent with the Commission's policy announced in its May 15, 1991, Public Notice and prior to further waste and delay of the Commission's valuable resources.

4. As a result of Mitchell's numerous and recurring derelictions throughout this proceeding, implementation of the first commercial television station to serve Slidell has been unduly delayed. Under these circumstances, Unicorn respectfully urges prompt Commission action to expedite the provision of this important new television service by immediately dismissing Mitchell's application, thereby removing any obstacle to immediate consideration and grant of Unicorn's application. Such action will serve the public interest by facilitating the earliest possible commencement of the first commercial television service licensed to Slidell.

Respectfully submitted,

CAROLINE K. POWLEY d/b/a
UNICORN SLIDELL

By: _____


B. JAY BARAFF
ALAN E. ARONOWITZ
Its Attorneys

BARAFF, KOERNER, OLENDER
& HOCHBERG, P.C.
5335 Wisconsin Avenue, NW
Suite 300
Washington, DC 20015-2003
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August 15, 1991

EXHIBIT 1



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, D.C. 20554

13110

News media information 202/632-5050. Recorded listing of releases and texts 202/632-0002.

May 15, 1991

PROCEDURES FOR THE PAYMENT OF HEARING FEES BY APPLICANTS FOR BROADCAST FACILITIES

The Commission has determined that comparative applicants for broadcast facilities must pay their hearing fees before they are designated for a comparative hearing. Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd 157, 158, recon. gtd. in part, FCC 91-154, adopted May 9, 1991.

Commencing on July 1, 1991, the deadline by which commercial broadcast applicants must pay their hearing fee will be established in the Public Notice announcing the acceptance of mutually exclusive applications for the facility. See 47 C.F.R. §§ 73.3571(c) (for AM), 73.3572(c) (for TV), 73.3573(f)(2) (for non-reserved band FM filed during a "window"). Generally, that date will be thirty (30) days after the deadline for filing petitions to deny, a date which is also established in the Public Notice.

IF A COMMERCIAL APPLICANT HAS BEEN ACCEPTED FOR FILING IN A PUBLIC NOTICE RELEASED PRIOR TO JULY 1, 1991, APPLICANT MUST PAY ITS HEARING FEE ON JULY 15, 1991.

This hearing fee payment requirement also applies to renewal applicants where a public notice announcing the acceptance for filing of a competing application was released prior to July 1, 1991.

Filing Procedures for July 15, 1991 Submissions:

The hearing fee should be transmitted to the Commission's lockbox bank in Pittsburgh, Pennsylvania so that it is received by the bank before midnight July 15, 1991. The mailing address for all commercial radio and TV hearing fees is:

Federal Communications Commission
Mass Media Services
P.O. Box 358170
Pittsburgh, PA 15251-5170

Each \$6,760 payment must be accompanied by an FCC Form 155 and a cover letter.

The FCC Form 155 must be appropriately filled out, including the name and address of the applicant and the file number of the application. When entering the file number for new applications, omit the first letters of the file number. ("BPH" for FM, "BPCT" for TV, and "BP" or "BMP" for AM). Renewal applicants should enter their call sign. The fee type code for radio applicants is MWR. The fee type code for TV applicants is MWT.

To ensure proper credit of the payment, the cover letter accompanying the submission should identify the applicant, the application file number (or call sign), and the city and state of the proposed facility.

Failure to make the hearing fee payment in a timely manner will result in the dismissal of the underlying pending application. Generally, an applicant will be informed that it has been dismissed for failure to make a timely payment of the hearing fee by letter. However, if dismissing an application by letter would delay the preparation of an HDO, the dismissal will be announced in the HDO, and if a case has been designated for hearing, the presiding judge will be informed of an applicant's failure to make timely payment of the hearing fee. If a timely submitted payment instrument proves to be uncollectible, the Office of Managing Director will inform the Mass Media Bureau or presiding judge, as appropriate, of the failure of the payment instrument, and the underlying application will be subject to dismissal.

Any requests for reconsideration of the dismissal of applications for fee defects should be addressed to the Commission's Managing Director. If the underlying hearing fee has not been paid, full payment of that fee must accompany the request for reconsideration.

Exceptions to the Fee Payment Requirement:

1. Singletons. If no mutually exclusive applications have been accepted for filing, your application is a singleton, and you are not required to pay the hearing fee. However, a later notice may announce the acceptance of mutually exclusive applications, and that notice will establish the hearing fee payment date for all applicants in the group.

2. Settlements. If all mutually exclusive applicants agree to a settlement and a request to approve the settlement is filed with the Commission on or before July 15, 1991, the applicants are not required to pay the hearing fee on that date. Settlement papers must be filed directly with the Commission's Secretary in Washington, D.C., not through the lockbox bank. In the case of a pre-designation settlement, the sole surviving applicant will be treated as a singleton.

3. Designations. If a Hearing Designation Order setting the mutually exclusive applicants for hearing is released prior to July 15, 1991, the applicants are not required to pay the hearing fee on that date. However, the applicants are required to pay the hearing fee with their Notices of Appearance. Failure to do so on the date established for filing a Notice of Appearance, see 47 C.F.R. 1.221, can result in dismissal of the application for failure to prosecute. To avoid any confusion that may be caused by the release of an HDO just prior to July 15, 1991, no HDOs will be released from July 8, 1991 to July 15, 1991.

Hearing Fee Refunds:

Refunds of the hearing will be available to applicants that are dismissed, voluntarily or involuntarily, before an HDO is issued or granted without being designated for a comparative hearing.

After an applicant has been designated for hearing, the hearing fee may also be refunded under the circumstances provided for in section 1.1111(c) of our rules. 47 C.F.R. § 1.1111(c).

EXHIBIT 2



PUBLIC NOTICE

14040

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, D.C. 20554

News media information 202/632-5050. Recorded listing of releases and texts 202/632-0002.

July 19, 1991

**LIST OF BROADCAST APPLICANTS
SUBMITTING HEARING FEE PAYMENTS
UNDER NEW RULES**

The Commission determined that mutually exclusive commercial broadcast applicants that were accepted for filing before July 1, 1991, but were not as yet designated for hearing in a Hearing Designation Order released prior to July 15, 1991, must pay their hearing fee by July 15, 1991. Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd 157, 158, recon. gtd. in part, 6 FCC Rcd 3403 (1991). In order to assist those pending applicants that wish to enter into settlement agreements, the attached list identifies those applicants who tendered hearing fee payments for broadcast applications, commencing with the submissions that were processed by the Mellon Bank on July 8, 1991 and ending with those that were processed by the Bank on July 16, 1991.

The items processed by the Bank on July 16 would include fee submissions tendered before midnight on July 15, 1991, but could also include submissions received by the Bank after midnight. In the latter case, the item would be date stamped July 16, 1991, and its timeliness will be determined by that date stamp. It should also be noted that payments transmitted to the bank and processed before July 8, 1991 do not appear on this list.

Copies of the submissions accompanying the fee payments are available for inspection in the appropriate processing branch.

FEE CONTROL NUMBER APPLICANT NAME

FEETYPE: MWR

9107088170276001	HOME BROADCAST COMPANY
9107088170276002	RIPPETOE, REID D
9107088170276003	SUN CITY COMMUNICATIONS LTD
9107098170277001	GRADICK, LESLIE E
9107108170278001	JERSEY DEVIL BROADCASTING COMPANY INC
9107108170278002	KENNEDY BROADCASTING INC
9107108170279001	TEMECULA COMMUNICATIONS
9107108170280001	BRENNER, JUDITH P
9107108170280002	KENDRICK, JOSEPH I
9107118170281001	ORCHON BROADCASTING COMPANY
9107118170281002	ROGERS, NATALIE L
9107128170282001	JB COMMUNICATIONS
9107128170282002	WALKER, W KEITH
9107128170282003	STOP 26 RIVERBEND PRODUCTIONS INC
9107128170282004	SPAIN, FRANK K
9107128170282005	STEELE, RUTH H
9107128170282006	KIMLER BROADCASTING INC
9107158170284001	PRESS BROADCASTING COMPANY
9107158170284002	DMR MEDIA INC
9107158170284003	DEAS COMMUNICATIONS INC
9107158170284004	MC MAKIN JR, HAYS
9107158170284005	ROCHLIS, JEFFREY
9107158170284006	IMBRAGULIO, BOBBYE
9107158170284007	JUPITER BROADCASTING CORP
9107158170284008	JUPITER BROADCASTING CORP
9107158170284009	RADIO MNSTRS BRD VCTRY CHRSTM CTR ASSEB
9107158170284010	BOKRAM, SALIJA:ST CYR, MICHAEL J
9107158170284011	DUNES BROADCASTING INC
9107158170284012	BEACH BROADCASTING COMPANY INC
9107158170284013	STICE COMMUNICATIONS INC
9107158170284014	KBEW INC
9107158170284015	SUN CITY COMMUNICATIONS INC
9107158170285001	LITTLE RIVER COMMUNICATIONS GROUP INC
9107158170285002	VINEYARD COMMUNICATIONS INC
9107158170285003	THE ANNIE CORPORATION
9107158170285004	PALM BEACH GARDENS RADIO
9107158170285005	OSBORNE, KENNETH
9107158170285006	JOHNSON, HOBART C
9107158170285007	KBSC BROADCASTING
9107158170285008	JERSEY SHORE BROADCASTING CORPORATION
9107158170285009	ATLANTIC RADIO COMMUNICATIONS INC
9107158170285010	HIER, NANCY C
9107158170285011	LD BROADCASTING LIMITED PARTNERSHIP
9107158170285012	MCI BROADCASTING LIMITED PARTNERSHIP
9107158170285013	POWELL, GLADYS E
9107158170285014	ATKINS, T K
9107158170285015	MURRAY COMMUNICATIONS ✓

FEE CONTROL NUMBER	APPLICANT NAME
9107158170285016	JOHNSTON AND JOHNSTON BROADCASTING
9107158170285017	IDAS, SAM
9107158170285018	RADIO LAKE GENEVA CORPORATION
9107158170285019	TRENTADUE, SCOTT M
9107158170285020	SCOTT COUNTY BROADCASTING INC
9107158170285021	RAMONA BROADCASTING COMPANY
9107158170285022	MURRAY, MARY C
9107158170285023	PARKER, EVELYN H
9107158170285024	KILMER, MARK A
9107158170285025	LEVINE, EDWARD F:LEVINE, PAMELA J
9107158170286001	OCEAN CITY COMMUNICATIONS CORPORATION
9107158170287001	EFFORD, KATHRYN J
9107158170287002	ROCKY MOUNT BROADCASTING
9107158170287003	GOLDEN CORNERS BROADCASTING INC
9107158170287004	TRI STATE BROADCASTING COMPANY
9107158170287005	LOS AMIGOS MEDIA A LIMITED PARTNERSHIP
9107158170287006	PACIFIC VIEW BROADCASTING
9107158170287007	RICKENBACKER JR, ROBERT C
9107158170287008	SNIFE JR, ALEXANDER
9107158170287009	J H COMMUNICATIONS
9107158170287010	WEERTS, ROBERT D:WEERTS, JENIFER L
9107158170287011	CONSTINE, WILLIAM V
9107158170287012	FM DATA BROADCASTING INC
9107168170288001	SOUTHERN OCEAN BROADCASTING CORPORATION
9107168170288002	CDD BROADCASTING COMPANY
9107168170288003	ROSAMOND RADIO INC
9107168170288005	NICASTRO, NANCY
9107168170288006	WSMK ENTERPRISES LIMITED PARTNERSHIP
9107168170288007	ABACUS BROADCASTING CORP
9107168170288008	TEMECULA VALLEY BROADCASTING
9107168170288009	FISHER COMMUNICATIONS OF CLEMSON INC
9107168170288010	HEALDSBURG EMPIRE CORPORATION
9107168170288011	SUN CITY BROADCASTERS
9107168170288012	NORTH BAY BROADCASTING INC
9107168170288013	BLACKRIDGE BROADCASTERS INC
9107168170288014	SULLIVAN COUNTY RADIO INC
9107168170288015	FISHMAN, LARRY
9107168170288016	EICHER COMMUNICATIONS INC
9107168170288017	AMERICAN INDIAN BROADCAST GROUP INC
9107168170288018	GRADICK, STEVEN L
9107168170288019	BRADLEY BROADCASTING COMPANY L P
9107168170288020	GILFORD BROADCASTING COMPANY
9107168170288021	WHIDBEY BROADCASTING SERVICE INC
9107168170288022	JANECEK, ROBERT D
9107168170288023	MC NAUGHTON, CHARLOTTE
9107168170288024	VAN DAM, LEON B
9107168170288025	JOHNSON, ANDREA
9107168170289001	PEG CO INC

FEE CONTROL NUMBER APPLICANT NAME

9107168170289002	PIKE COMMUNICATIONS INC
9107168170289003	COPE COMMUNICATIONS INC
9107168170289004	CHAPMAN, KRISTINA L
9107168170289005	CRYSTAL CLEAR COMMUNICATIONS INC
9107168170289006	TRIUMPH COMMUNICATIONS INC
9107168170289007	MARTINEZ JR, DOMINGO
9107168170289008	TURNER, PATRICIA A
9107168170289009	MC KINNEY, KEAN R:MC KINNEY, LINDA S
9107168170289010	GORE, JERRY A
9107168170289011	MANDUJANO COMMUNICATIONS INC
9107168170289012	DRAGONFLY COMMUNICATIONS INC
9107168170289013	KWIATKOWSKI, TOM
9107168170289014	REIER BROADCASTING COMPANY
9107168170289015	LAKE GENEVA BROADCASTING INC
9107168170289016	PVR COMMUNICATIONS
9107168170289017	DYBEDOCK & ASSOCIATES INC
9107168170289018	SUN CITY WIRELESS LTD LP
9107168170289019	WIND N SEA FM LIMITED PARTNERSHIP
9107168170289020	MAR BOB BEN

FEETYPE: MWT

9107168170288004	POWLEY, CAROLINE K
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CERTIFICATE OF SERVICE

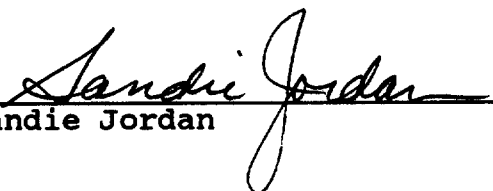
I, Sandie Jordan, a secretary in the law offices of Baraff, Koerner, Olender & Hochberg, P.C., certify that on this 16th day of August, 1991, a copy of the foregoing Reply to Opposition to Motion to Dismiss or Deny was mailed, first-class U.S. mail, postage prepaid to:

Roy Stewart, Esq. *
Mass Media Bureau
Federal Communications Commission
1919 M Street, NW
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Barbara Kreisman, Esq. *
Mass Media Bureau
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Washington, DC 20554

Eugene T. Smith, Esquire
715 G Street, S.E.
Washington, DC 20003
Counsel for Trudy M. Mitchell



Sandie Jordan

* Hand Delivered

AEA:sj

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